

REFERENCE TITLE: game and fish; enforcement; penalties

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2129

Introduced by  
Representatives Weiers JP, Mason: Biggs, Chase, Jones, McClure, Murphy,  
Quelland, Senator Verschoor

AN ACT

AMENDING SECTIONS 8-207, 13-907, 17-101, 17-309, 17-314, 17-315 AND 17-340,  
ARIZONA REVISED STATUTES; RELATING TO GAME AND FISH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-207, Arizona Revised Statutes, is amended to  
3 read:

4 8-207. Order of adjudication; noncriminal; use as evidence

5 A. Except as provided by section 13-904, subsection H, section  
6 13-2921.01, SECTION 17-340 or sections 28-3304, 28-3306 and 28-3320, an order  
7 of the juvenile court in proceedings under this chapter shall not be deemed a  
8 conviction of crime, impose any civil disabilities ordinarily resulting from  
9 a conviction or operate to disqualify the juvenile in any civil service  
10 application or appointment.

11 B. The disposition of a juvenile in the juvenile court may not be used  
12 against the juvenile in any case or proceeding other than a criminal or  
13 juvenile case in any court, whether before or after reaching majority, except  
14 as provided by section 13-2921.01, SECTION 17-340 or sections 28-3304,  
15 28-3306 and 28-3320.

16 Sec. 2. Section 13-907, Arizona Revised Statutes, is amended to read:

17 13-907. Setting aside judgment of convicted person on  
18 discharge; application; release from disabilities;  
19 exceptions

20 A. Except as OTHERWISE provided in ~~subsection B of~~ this section, every  
21 person convicted of a criminal offense, on fulfillment of the conditions of  
22 probation or sentence and discharge by the court, may apply to the judge,  
23 justice of the peace or magistrate who pronounced sentence or imposed  
24 probation or such judge, justice of the peace or magistrate's successor in  
25 office to have the judgment of guilt set aside. The convicted person shall  
26 be informed of this right at the time of discharge.

27 B. The application to set aside the judgment may be made by the  
28 convicted person or by the convicted person's attorney or probation officer  
29 authorized in writing.

30 C. If the judge, justice of the peace or magistrate grants the  
31 application, the judge, justice of the peace or magistrate shall set aside  
32 the judgment of guilt, dismiss the accusations or information and order that  
33 the person be released from all penalties and disabilities resulting from the  
34 conviction other than those imposed by:

35 1. The department of transportation pursuant to section 28-3304,  
36 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used  
37 as a conviction if such conviction would be admissible had it not been set  
38 aside and may be pleaded and proved in any subsequent prosecution of such  
39 person by the state or any of its subdivisions for any offense or used by the  
40 department of transportation in enforcing section 28-3304, 28-3306, 28-3307,  
41 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

42 2. THE GAME AND FISH COMMISSION PURSUANT TO SECTION 17-314 OR 17-340.

43 ~~B.~~ D. This section does not apply to a person convicted of a criminal  
44 offense:

45 1. Involving the infliction of serious physical injury.

1           2. Involving the use or exhibition of a deadly weapon or dangerous  
2 instrument.

3           3. For which the person is required or ordered by the court to  
4 register pursuant to section 13-3821.

5           4. For which there has been a finding of sexual motivation pursuant to  
6 section 13-118.

7           5. In which the victim is a minor under fifteen years of age.

8           6. In violation of section 28-3473, any local ordinance relating to  
9 stopping, standing or operation of a vehicle or title 28, chapter 3, except a  
10 violation of section 28-693 or any local ordinance relating to the same  
11 subject matter as section 28-693.

12           Sec. 3. Section 17-101, Arizona Revised Statutes, is amended to read:

13           17-101. Definitions

14           A. In this title, unless the context otherwise requires:

15           1. "Angling" means the taking of fish by one line and not to exceed  
16 two hooks, ~~or~~ by one line and one artificial lure, which may have attached  
17 more than one hook, or by one line and not to exceed two artificial flies or  
18 lures.

19           2. "Bag limit" means the maximum limit, in number or amount, of  
20 wildlife which may lawfully be taken by any one person during a specified  
21 period of time.

22           3. "Closed season" means the time during which wildlife may not be  
23 lawfully taken.

24           4. "Commission" means the Arizona game and fish commission.

25           5. "Department" means the Arizona game and fish department.

26           6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall,  
27 pit, explosive, poison or stupefying substance, crossbow, firearm, bow and  
28 arrow, or other implement used for taking wildlife. Device does not include  
29 a raptor or any equipment used in the sport of falconry.

30           7. "Falconry" means the sport of hunting or taking quarry with a  
31 trained raptor.

32           8. "Fishing" means to lure, attract or pursue aquatic wildlife in such  
33 a manner that the wildlife may be captured or killed.

34           9. "Fur dealer" means any person engaged in the business of buying for  
35 resale the raw pelts or furs of wild mammals.

36           10. "Guide" means a person who, for pay, aids or assists any person in  
37 taking wildlife.

38           11. "License year" means the twelve-month period between January 1 and  
39 December 31, inclusive.

40           12. "Nonresident" means a citizen of the United States or an alien who  
41 has not been a bona fide resident of the state of Arizona for six months  
42 immediately preceding the date of application for a license.

43           13. "Open season" means the time during which wildlife may be lawfully  
44 taken.

1       14. "Possession limit" means the maximum limit, in number or amount of  
2 wildlife, which may be possessed at one time by any one person.

3       15. "Resident" means a person who has been a bona fide resident of the  
4 state of Arizona for six months immediately preceding the date of application  
5 for a license, or a member of the armed forces who has been stationed in  
6 Arizona for a period of thirty days immediately preceding the date of  
7 application for a license.

8       16. "Road" means any maintained right-of-way for public conveyance.

9       17. "Statewide" means all lands except those areas lying within the  
10 boundaries of state and federal refuges, parks and monuments, unless  
11 specifically provided differently by commission order.

12       18. "Take" means pursuing, shooting, hunting, fishing, trapping,  
13 killing, capturing, snaring or netting wildlife or the placing or using of  
14 any net or other device or trap in a manner that may result in the capturing  
15 or killing of wildlife.

16       19. "Taxidermist" means any person who engages for hire in the  
17 mounting, refurbishing, maintaining, restoring or preserving of any display  
18 specimen.

19       20. "Traps" or "trapping" means taking wildlife in any manner except  
20 with a gun or other implement in hand.

21       21. "Wild" means, in reference to mammals and birds, those species  
22 which are normally found in a state of nature.

23       22. "Wildlife" means all wild mammals, wild birds and the nests or eggs  
24 thereof, reptiles, amphibians, mollusks, crustaceans, and fish, including  
25 their eggs or spawn, AND ANY DECOY OR SIMULATED WILDLIFE OBJECT THAT IS USED,  
26 OPERATED OR OWNED BY THE DEPARTMENT.

27       23. "Zoo" means a commercial facility open to the public where the  
28 principal business is holding wildlife in captivity for exhibition purposes.

29       B. The following definitions of wildlife shall apply:

30       1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans  
31 and soft-shelled turtles.

32       2. Game mammals are deer, elk, bear, PRONGHORN (antelope), bighorn  
33 sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and  
34 cottontail rabbit.

35       3. Big game are wild turkey, deer, elk, PRONGHORN (antelope), bighorn  
36 sheep, bison (buffalo), peccary (javelina), bear and mountain lion.

37       4. "TROPHY" MEANS:

38       (a) A MULE DEER BUCK WITH AT LEAST FOUR POINTS ON ONE ANTLER, NOT  
39 INCLUDING THE EYE-GUARD POINT.

40       (b) A WHITETAIL DEER BUCK WITH AT LEAST THREE POINTS ON ONE ANTLER,  
41 NOT INCLUDING THE EYE-GUARD POINT.

42       (c) AN ELK BULL WITH AT LEAST SIX POINTS ON ONE ANTLER.

43       (d) A PRONGHORN (ANTELOPE) BUCK WITH AT LEAST ONE HORN EXCEEDING OR  
44 EQUAL TO FOURTEEN INCHES IN TOTAL LENGTH.

1 (e) ANY BIGHORN SHEEP.  
 2 (f) ANY BISON (BUFFALO).  
 3 ~~4.~~ 5. Small game are cottontail rabbits, tree squirrels, upland game  
 4 birds and migratory game birds.  
 5 ~~5.~~ 6. Fur-bearing animals are muskrats, raccoons, otters, weasels,  
 6 bobcats, beavers, badgers and ringtail cats.  
 7 ~~6.~~ 7. Predatory animals are foxes, skunks, coyotes and bobcats.  
 8 ~~7.~~ 8. Nongame animals are all wildlife except game mammals, game  
 9 birds, fur-bearing animals, predatory animals and aquatic wildlife.  
 10 ~~8.~~ 9. Upland game birds are quail, partridge, grouse and pheasants.  
 11 ~~9.~~ 10. Migratory game birds are wild waterfowl, including ducks,  
 12 geese and swans; sandhill cranes; all coots, all gallinules, common snipe,  
 13 wild doves and bandtail pigeons.  
 14 ~~10.~~ 11. Nongame birds are all birds except upland game birds and  
 15 migratory game birds.  
 16 ~~11.~~ 12. Raptors are birds that are members of the order of  
 17 falconiformes or strigiformes and include falcons, hawks, owls, eagles and  
 18 other birds that the commission may classify as raptors.  
 19 ~~12.~~ 13. Game fish are trout of all species, bass of all species,  
 20 catfish of all species, sunfish of all species, northern pike, walleye and  
 21 yellow perch.  
 22 ~~13.~~ 14. Nongame fish are all the species of fish except game fish.  
 23 ~~14.~~ 15. Trout means all species of the family salmonidae, including  
 24 grayling.  
 25 Sec. 4. Section 17-309, Arizona Revised Statutes, is amended to read:  
 26 17-309. Violations; classification; forfeiture of property used  
 27 in crime  
 28 A. Unless otherwise prescribed by this title, it is unlawful for a  
 29 person to:  
 30 1. Violate any provision of this title or a- ANY rule ~~prescribed under~~  
 31 ~~the provisions of~~ ADOPTED PURSUANT TO this title.  
 32 2. Take, possess, transport, buy, sell or offer or expose for sale  
 33 wildlife except as expressly permitted by this title.  
 34 3. Destroy, injure or molest livestock, growing crops, personal  
 35 property, notices or signboards, or other improvements while hunting,  
 36 trapping or fishing.  
 37 4. Discharge a firearm while taking wildlife within one-fourth mile of  
 38 an occupied farmhouse or other residence, cabin, lodge or building without  
 39 permission of the owner or resident.  
 40 5. Take a game bird, game mammal or game fish and knowingly permit an  
 41 edible portion thereof to go to waste, except as provided in section 17-302.  
 42 6. Take big game, except bear or mountain lion, with the aid of dogs.  
 43 7. Make more than one use of a shipping permit or coupon issued by the  
 44 commission.

1           8. Obtain a license or take wildlife during the period for which the  
2 person's license has been revoked or suspended or the person has been denied  
3 a license.

4           9. Litter hunting and fishing areas while taking wildlife.

5           10. Possess while hunting any contrivance designed to silence, muffle  
6 or minimize the report of a firearm.

7           11. Take wildlife during the closed season.

8           12. Take wildlife in an area closed to the taking of that wildlife.

9           13. Take wildlife with an unlawful device.

10          14. Take wildlife by an unlawful method.

11          15. Take wildlife in excess of the bag limit.

12          16. Possess wildlife in excess of the possession limit.

13          17. Possess or transport any wildlife or parts of the wildlife which  
14 was unlawfully taken.

15          18. Possess or transport the carcass of big game without a valid tag  
16 being attached.

17          19. Use the edible parts of any game mammal or any part of any game  
18 bird or nongame bird as bait.

19          20. Possess or transport the carcass or parts of a carcass of any  
20 wildlife which cannot be identified as to species and legality.

21          21. Take game animals, game birds and game fish with an explosive  
22 compound, poison or any other deleterious substances.

23          22. Import into this state or export from this state the carcass or  
24 parts of a carcass of any wildlife unlawfully taken or possessed.

25          B. Unless a different or other penalty or punishment is specifically  
26 prescribed a person who violates any provision of this title, or who violates  
27 or fails to comply with a lawful order or rule of the commission, is guilty  
28 of a class 2 misdemeanor.

29          C. A person who knowingly takes any big game during a closed season or  
30 who knowingly possesses, transports or buys any big game which was unlawfully  
31 taken during a closed season is guilty of a class 1 misdemeanor.

32          D. A person is guilty of a class 6 felony who knowingly:

33           1. Barter, sells or offers for sale any big game or parts of big game  
34 taken unlawfully.

35           2. Barter, sells or offers for sale any wildlife or parts of wildlife  
36 unlawfully taken during a closed season.

37           3. Barter, sells or offers for sale any wildlife or parts of wildlife  
38 imported or purchased in violation of this title or a lawful rule of the  
39 commission.

40           4. Assists another person for monetary gain with the unlawful taking  
41 of big game.

42          5. TAKES OR POSSESSES WILDLIFE WHILE UNDER PERMANENT REVOCATION UNDER  
43 SECTION 17-340, SUBSECTION B.

1 E. ANY VEHICLE, WATERCRAFT, AIRCRAFT, FIREARM OR OTHER DEVICE OR  
 2 EQUIPMENT OR AN INSTRUMENTALITY USED IN THE COMMISSION OF A CRIMINAL OFFENSE  
 3 UNDER SUBSECTION C OR D OF THIS SECTION IS SUBJECT TO CIVIL FORFEITURE UNDER  
 4 TITLE 13, CHAPTER 39.

5 ~~E.~~ F. A peace officer who knowingly fails to enforce a lawful rule of  
 6 the commission or this title is guilty of a class 2 misdemeanor.

7 Sec. 5. Section 17-314, Arizona Revised Statutes, is amended to read:

8 17-314. Civil liability for illegally taking or wounding  
 9 wildlife; recovery of damages

10 ~~A. The commission or any officer charged with enforcement of the laws~~  
 11 ~~relating to game and fish, if so directed by the commission, may bring a~~  
 12 ~~civil action in the name of the state against any person unlawfully taking,~~  
 13 ~~wounding or killing, or unlawfully in possession of, any of the following~~  
 14 ~~wildlife, or part thereof, and seek to recover the following minimum sums as~~  
 15 ~~damages:~~

16 A. THE COMMISSION MAY ASSESS MONETARY DAMAGES AGAINST ANY PERSON WHO  
 17 UNLAWFULLY TAKES, WOUNDS, KILLS OR POSSESSES ANY WILDLIFE, OR PART OF  
 18 WILDLIFE, BUT THE AMOUNT OF THE DAMAGES SHALL NOT BE LESS THAN THE FOLLOWING:

19 1. FOR each turkey or javelina	<del>\$150.00</del> \$500.00
20 <del>2. Each bear, mountain lion, antelope or deer</del>	<del>450.00</del>
21 <del>3. Each buffalo, elk, bighorn sheep, eagle or endangered species</del>	<del>750.00</del>
22 <del>4. Each beaver</del>	<del>75.00</del>
23 <del>5. Each goose or raptor</del>	<del>40.00</del>
24 <del>6. Each duck, small game animal or small game bird</del>	<del>15.00</del>
25 <del>7. Each nongame bird or game fish</del>	<del>10.00</del>
26 2. FOR EACH BEAR, MOUNTAIN LION, ANTELOPE OR DEER,	
27 OTHER THAN TROPHY	\$1,500.00
28 3. FOR EACH ELK OR EAGLE, OTHER THAN TROPHY OR	
29 ENDANGERED SPECIES	\$2,500.00
30 4. FOR EACH PREDATORY, FUR-BEARING OR NONGAME ANIMAL	\$ 250.00
31 5. FOR EACH SMALL GAME OR AQUATIC WILDLIFE ANIMAL	\$ 50.00
32 6. FOR EACH TROPHY OR ENDANGERED SPECIES ANIMAL	\$8,000.00

33 ~~B. No verdict or judgment recovered by the state in such action shall~~  
 34 ~~be for less than the sum fixed in this section. The action for damages may~~  
 35 ~~be joined with an action for possession, and recovery had for the possession~~  
 36 ~~as well as the damages.~~

37 B. PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE COMMISSION MAY  
 38 ASSESS MONETARY DAMAGES AS PROVIDED BY SUBSECTION A OF THIS SECTION AND DENY  
 39 A PERSON THE PRIVILEGE OF SECURING A LICENSE TO TAKE WILDLIFE UNTIL THE  
 40 ASSESSMENT IS PAID.

41 C. THE ASSESSMENT OF MONETARY DAMAGES UNDER SUBSECTION A OF THIS  
 42 SECTION ESTABLISHES A DEBT TO THIS STATE. THE COMMISSION MAY:

43 1. INITIATE CIVIL PROCEEDINGS IN THE NAME OF THIS STATE TO COLLECT THE  
 44 DEBT, AND THE PROCEEDINGS MAY INCLUDE AN ACTION FOR POSSESSION AND RECOVERY  
 45 OF POSSESSION IN ADDITION TO THE DAMAGES.

2. INITIATE PROCEEDINGS TO SET OFF THE DEBT AGAINST THE DEBTOR'S TAX REFUNDS UNDER SECTION 42-1122.

~~C.~~ D. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

~~D.~~ E. All ~~funds~~ MONIES recovered pursuant to this section shall be placed in the wildlife theft prevention fund.

F. THE ASSESSMENT OF MONETARY DAMAGES UNDER SUBSECTION A OF THIS SECTION IS SUBJECT TO NOTICE AND HEARING UNDER TITLE 41, CHAPTER 6, ARTICLE 10.

Sec. 6. Section 17-315, Arizona Revised Statutes, is amended to read:

17-315. Wildlife theft prevention fund; authorized expenditures

A. ~~There shall be~~ A wildlife theft prevention fund ~~which shall consist~~ IS ESTABLISHED CONSISTING of:

1. Monies received from damage assessments pursuant to section 17-314.
2. Money received from donations to the fund.
3. Monies appropriated by the legislature for the purposes provided in this article.
4. Monies received as fines, forfeitures and penalties collected for violations of this title.

B. ~~Funds from~~ MONIES IN the wildlife theft prevention fund shall be expended only for the following purposes:

1. The financing of reward payments to persons, other than peace officers, game and fish department personnel and members of their immediate families, responsible for information leading to the arrest of any person for unlawfully taking, wounding or killing, possessing, transporting or selling wildlife and attendant acts of vandalism. The commission shall establish the schedule of rewards to be paid for information received and payment shall be made from ~~funds~~ MONIES available for this purpose.
2. The financing of a statewide telephone reporting system under the name of "operation game thief", which shall be established by the director under the guidance of the commission.
3. The promotion of the public recognition and awareness of the wildlife theft prevention program.
4. Investigations of the unlawful commercial use of wildlife.

C. The wildlife theft prevention fund shall be expended in conformity with the laws governing state financial operations, ~~except that any balance in excess of fifty thousand dollars shall revert to the game and fish fund.~~ Balances remaining at the end of the fiscal year ~~shall be~~ ARE exempt from the provisions of section 35-190, relating to lapsing of appropriations.



1           Sec. 7. Section 17-340, Arizona Revised Statutes, is amended to read:  
2           17-340. Revocation, suspension and denial of privilege of  
3           taking wildlife; notice; violation; classification

4           A. Upon conviction OR AFTER ADJUDICATION AS A JUVENILE DELINQUENT and  
5           in addition to other penalties prescribed by this title, the commission,  
6           after a public hearing, may revoke, ~~or suspend a license issued to any person~~  
7           ~~under this title and deny the person the right to secure another license~~ OR  
8           DENY A PERSON'S PRIVILEGE to take OR POSSESS wildlife for a period of not to  
9           exceed five years PER VIOLATION, WHICH MAY RUN CONSECUTIVELY, for:

10          1. Unlawful taking, UNLAWFUL SELLING, UNLAWFUL OFFERING FOR SALE,  
11          UNLAWFUL BARTERING or unlawful possession of wildlife.

12          2. Careless use of firearms which has resulted in the injury or death  
13          of any person.

14          3. Destroying, injuring or molesting livestock, or damaging or  
15          destroying growing crops, personal property, notices or signboards, or other  
16          improvements while hunting, trapping or fishing.

17          4. Littering public hunting or fishing areas while taking wildlife.

18          5. Knowingly allowing another person to use the person's big game tag,  
19          except as provided by section 17-332, subsection D.

20          6. A violation of section 17-303, 17-304 or 17-341.

21          7. A VIOLATION OF SECTION 17-309, SUBSECTION A, PARAGRAPH 1 INVOLVING  
22          ANY UNLAWFUL USE OF AIRCRAFT TO TAKE, ASSIST IN TAKING, HARASS, CHASE, DRIVE,  
23          LOCATE OR ASSIST IN LOCATING WILDLIFE.

24          ~~B. Notwithstanding subsection A of this section, any person who is~~  
25          ~~assessed civil damages under section 17-314 for the unlawful taking or~~  
26          ~~possession of wildlife may be denied the right to secure a license to take~~  
27          ~~wildlife until damages have been paid in full.~~

28          B. ON CONVICTION OR AFTER ADJUDICATION AS A JUVENILE DELINQUENT AND IN  
29          ADDITION TO OTHER PENALTIES PRESCRIBED BY THIS TITLE, THE COMMISSION, AFTER A  
30          PUBLIC HEARING, MAY REVOKE, SUSPEND OR DENY A PERSON'S PRIVILEGE TO TAKE  
31          WILDLIFE FOR A PERIOD OF FIVE YEARS OR MORE, OR PERMANENTLY, IN THE FOLLOWING  
32          CIRCUMSTANCES:

33          1. THE PERSON'S PRIVILEGE TO TAKE WILDLIFE HAS PREVIOUSLY BEEN  
34          REVOKED, SUSPENDED OR DENIED AT ANY TIME OR PLACE.

35          2. UNLAWFULLY TAKING OR POSSESSING TROPHY OR ENDANGERED SPECIES  
36          ANIMALS.

37          3. UNLAWFULLY TAKING OR POSSESSING THREE OR MORE TIMES THE ESTABLISHED  
38          LIMITS.

39          C. On receiving a report from the licensing authority of a state which  
40          is a party to the wildlife violator compact, adopted under chapter 5 of this  
41          title, that a resident of this state has failed to comply with the terms of a  
42          wildlife citation, the commission, after a public hearing, may suspend any  
43          license issued under this title to take wildlife until the licensing  
44          authority furnishes satisfactory evidence of compliance with the terms of the  
45          wildlife citation.

1 D. In carrying out the provisions of this section the director shall  
2 notify the licensee, within one hundred eighty days after conviction, to  
3 appear and show cause why the license should not be revoked, suspended or  
4 denied. The notice may be served personally or by certified mail sent to the  
5 address appearing on the license.

6 E. The commission shall furnish to license dealers the names and  
7 addresses of persons whose licenses have been revoked or suspended, and the  
8 periods for which they have been denied the right to secure licenses.

9 F. The commission may use the services of the office of administrative  
10 hearings to conduct hearings and to make recommendations to the commission  
11 pursuant to this section.

12 G. A person who takes wildlife in this state, or attempts to obtain a  
13 license to take wildlife, at a time when the person's privilege to do so is  
14 suspended, revoked or denied under this section is guilty of a class 1  
15 misdemeanor. On receipt of notice of conviction under this subsection, the  
16 commission may extend the period for which the ~~license~~ PRIVILEGE TO TAKE  
17 WILDLIFE is suspended or revoked, or the right to secure another license is  
18 denied, ~~for an additional period not to exceed an additional five years.~~

19 Sec. 8. Emergency

20 This act is an emergency measure that is necessary to preserve the  
21 public peace, health or safety and is operative immediately as provided by  
22 law.